

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVEN H. KASSEL,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

No. C-06-03273 SC

ORDER DENYING MOTION
TO STAY ENFORCEMENT
OF JUDGMENT PENDING
APPEAL

I. INTRODUCTION

On April 30, 2007, following a three day trial, the Court entered judgment against Plaintiff Steven H. Kassel ("Kassel") and in favor of Defendant, the United States of America ("Government"), in the amount of \$25,568.68 plus costs. See Docket No. 44. On the Government's motion, the Court subsequently amended the judgment to include post-judgment interest, which began to accrue on April 30, 2007. See Docket No. 48.

Kassel has appealed both the original Judgment and the Order Granting Defendant's Motion to Alter Judgment. See Docket No. 51. Now before the Court is Kassel's Motion to Stay Enforcement of Judgment Pending Appeal. See Docket No. 52. The Government opposed Kassel's motion. See Docket No. 55. For the reasons set forth herein, the Court DENIES Kassel's motion to stay judgment

1 pending appeal.

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3 **II. DISCUSSION**

4 Kassel seeks a stay of judgment pending appeal, but he has
5 neither posted a bond nor shown any basis for staying the judgment
6 absent a bond.

7 Pursuant to Federal Rule of Civil Procedure 62(d), an
8 appellant may obtain a stay of judgment by posting a supersedeas
9 bond at or after the time of filing the notice of appeal. Fed. R.
10 Civ. P. 62(d). Posting the bond allows a stay as a matter of
11 right. See id. Although the text of Rule 62(d) only refers to
12 bonds, courts have interpreted the rule with some flexibility,
13 allowing other forms of security as may be appropriate for a given
14 case. See, e.g., Townsend v. Holman Consulting Corp., 929 F.2d
15 1358, 1367 (9th Cir. 1991) (en banc); Int'l Telemeter Corp. v.
16 Hamlin Int'l Corp., 754 F.2d 1492, 1495 (9th Cir. 1985). "The
17 posting of a bond protects the prevailing plaintiff from the risk
18 of a later uncollectible judgment and compensates him for delay in
19 the entry of the final judgment." N.L.R.B. v. Westphal, 859 F.2d
20 818, 819 (9th Cir. 1988).

21 Kassel has not posted a bond or any other security which would
22 protect the Government from future nonpayment. The Court may, at
23 its discretion, grant a stay in the absence of a bond, after
24 considering a number of factors, including:

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26 (1) the complexity of the collection process;
27 (2) the amount of time required to obtain a
28 judgment after it is affirmed on appeal; (3)
the degree of confidence that the district
court has in the availability of funds to pay

1 the judgment; (4) whether the defendant's
2 ability to pay the judgment is so plain that
3 the cost of a bond would be a waste of money;
4 and (5) whether the defendant is in such a
5 precarious financial situation that the
6 requirement to post a bond would place other
7 creditors of the defendant in an insecure
8 position.

9 Dillon v. City of Chicago, 866 F.2d 902, 904-05 (7th Cir. 1988)
10 (internal citations omitted). Kassel has not provided the Court
11 with information on any of these factors.

12 The only discernible basis Kassel suggests for granting the
13 stay is that the harm to the Government would be "inconsequential."
14 Mot. at 2. Kassel offers no support for this assertion, however.
15 The Government is entitled to prompt payment of the penalty it
16 levied against Kassel in 2005. During the time Kassel's appeal is
17 pending, interest will continue to accrue, as will Kassel's legal
18 bills. It would be unfair to make the Government carry the risk of
19 Kassel becoming unable to pay while the appeal is pending. It is
20 this exact risk that Rule 62(d) is intended to prevent a prevailing
21 party from shouldering.

22 **III. CONCLUSION**

23 For the foregoing reasons, the Court finds that there is no
24 justification for a stay pending appeal in this matter. The Court
25 therefore DENIES Kassel's motion.

26 IT IS SO ORDERED.

27 Dated: September 19, 2007

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UNITED STATES DISTRICT JUDGE

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